



2025:DHC:4452



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: 15.05.2025

+ **W.P.(C) 17542/2022, CM APPL. 55997/2022**

G4S FACILITY SERVICES INDIA PVT LTD.Petitioner

Through: Mr. Amitabh Chaturvedi, Mr.
Gulshan Chawla, Ms. Rimjhim
Suhani, Advocates

versus

CHET RAMRespondent

Through: Mr. Utsav Jain, Advocate for R-1
Mr. Manashwy Jha, Panel Counsel
(Civil), GNCTD
Mr. Abhinit Das, Advocate (Amicus
Curiae)

CORAM:

HON'BLE MS. JUSTICE TARA VITASTA GANJU

TARA VITASTA GANJU, J.: (Oral)

1. The Registry is directed to ensure that the cause title as appearing in the cause list is in the terms of the amended memo of parties /directions passed by this Court from time to time.
2. The present Petition has been filed under Article 226 and 227 of the Constitution of India seeking to challenge an Order dated 19.12.2019 passed by the Controlling Authority, Hari Nagar, South West district, New Delhi [hereinafter referred to as "Impugned Order"] under the Payment of Gratuity Act, 1972 [hereinafter referred to as "Act"]. In addition, the challenge has also been made to the recovery certificate which emanates from the



Impugned Order.

3. A Coordinate Bench of this Court by its Order dated 22.12.2022 had stayed the Impugned Order, subject to the Petitioner depositing Rs. 1,05,895/- with the Registrar General of this Court. By an Order dated 17.04.2025, this Court had appointed an Amicus Curiae in the matter. Learned Counsel have been heard in the matter.

4. Briefly the facts are that the Respondent No. 1/Workman joined the services of Petitioner/Management on the contract of employment on 09.05.2007. His services were terminated on 31.08.2018 [this is borne from the paragraph 2 of the statement of claim of the Petitioner/Management]. Subsequently, the Petitioner/Management calculated gratuity which was offered to the Respondent No. 1/Workman. It is the case of the Petitioner/Management that the gratuity amount was not accepted by the Respondent No.1/Workman, however this is disputed by the Respondent No. 1/Workman. Instead, a Claim Petition was filed by the Respondent No. 1/Workman before the office of the Controlling Authority, Labour Commissioner, New Delhi [hereinafter referred to as “Controlling Authority”] on 27/29.03.2019 claiming an amount of Rs. 1,05,895/- along with the interest at the rate of 20% per annum.

4.1 Although initially there was an appearance on behalf of the Petitioner/Management before the Controlling Authority, however the Petitioner/Management stopped appearing, and an *ex-parte* Order was passed against the Petitioner/Management by the Controlling Authority. Pursuant to the Impugned Order, a Recovery Certificate was also issued on 19.08.2020 by the office of the Joint Labour Commissioner [hereinafter



referred to as “Impugned Recovery Certificate”].

4.2 An Application was filed by the Petitioner/Management on 15.09.2020 [Annexure P-6] before the Controlling Authority seeking recall of the Impugned Order along with other prayers. It is the case of the Petitioner/Management that this Application was neither heard nor was disposed of by the Controlling Authority. This led to the filing of the present Petition.

5. Learned Counsel appearing on behalf of the Petitioner/Management has made two submissions. In the first instance, it is submitted that in terms of Section 2(a)(i)(b) of the Act, in cases where the management has branches in more than one State, the appropriate Government as defined under the Act would be the Central Government. He seeks to rely upon Section 2(a)(i), 2(d) and Section 3 of the Act in this behalf to submit that the Petitioner/Management has branch offices in multiple cities in India and thus, the appropriate Government would be the Central Government. Reliance in this behalf is placed on the provisions of the Act as well as on the judgment of the Coordinate Bench of this Court in ***Balsara Hygiene Products Limited v. The Appellate Authority***¹, which has been upheld by Supreme Court, ***National Agricultural Co-operative Marketing Federation of India Ltd. v. Union of India and Anr.***² and ***M/s G4S Secure Solutions India Pvt. Ltd v. Manoj Kumar Jha.***

5.1 Learned Counsel submits that given the fact that the Controlling Authority had no jurisdiction to entertain the Claim Petition, the Impugned

¹ 2001 SCC OnLine Del 898

² 2019 SCC OnLine Del 11249



Order cannot be sustained.

6. The learned Amicus Curiae has also filed a compilation of judgments and submits that in view of the settled law as laid down in ***Balsara Hygiene*** case the Controlling Authority would be the controlling authority appointed by the Central Government and thus, the Impugned Order has been passed without jurisdiction.

7. Learned Counsel appearing on behalf of the Respondent No.1, on the other hand, has raised two objections. Firstly, he submits that the Petition is not maintainable in view of the existence of a remedy of an Appeal. Reliance is placed on the Section 7(7) of the Act. Secondly, it is contended that the Impugned Order was passed on 19.12.2019 and the Petition which is filed on 20.12.2022 is barred by delay and laches.

8. In Rejoinder, learned Counsel appearing for the Petitioner/Management has contended that Notice of the Impugned Order was only received by the Petitioner/Management after the Impugned Recovery Certificate was received in the office of the Petitioner/Management and subsequently on 15.09.2020, an Application was filed by the Petitioner/Management before the Controlling Authority for setting aside of the Impugned Order. He further submits that since there was no order passed on the Application, the Petitioner/Management was constrained to file the present Petition.

8.1 On the other issue raised by the learned Counsel for the Respondent No.1, learned Counsel appearing for the Petitioner/Management submits that it is settled law that even in spite of an Appellate remedy being available, an



order passed by an authority without jurisdiction, can always be challenged under Article 226 without taking recourse to alternate remedy. Reliance in this behalf is placed on the judgment passed by the Supreme Court in *Whirlpool Corporation v. Registrar of Trade Marks, Mumbai & Ors.*³, *Radha Krishna Industries v. State of Himachal Pradesh & Ors.*⁴ and the judgment passed by this Court in *Acceptier Investments Aircrafts Limited v. Union of India & Anr.*⁵

8.2 In any event, it is contended by the learned Counsel appearing for the Petitioner/Management that since the Controlling Authority appointed by the State Government passed the Impugned Order without jurisdiction, the remedy of an Appeal which would otherwise lie before the Appellate authority appointed by the state government which is not a feasible alternate remedy.

9. The issue before the Court is limited as to whether the Impugned Order and Impugned Recovery Certificate have been passed by the appropriate Government as is defined in the Act. It is apposite to set out relevant provisions of the Act below:

“..

2. Definitions. – In this Act, unless the context otherwise requires,

(a) "appropriate Government" means,-

(i) in relation to an establishment-

(a) belonging to, or under the control of, the Central Government,

(b) having branches in more than one State,

(c) of a factory belonging to, or under the control of, the Central Government,

(d) of a major port, mine, oilfield or railway company, the Central Government,

³ (1998) 8 SCC 1

⁴ (2021) 6 SCC 771

⁵ SCC OnLine Del 3895



(ii) in any other case, the State Government;

...

(d) “controlling authority” means an authority appointed by the appropriate Government under section 3;

...

3. Controlling authority.– The Appropriate Government may, by notification, appoint any officer to be a controlling authority, who shall be responsible for the administration of this Act and different authorities may be appointed for different areas.

[Emphasis Supplied]

9.1 Section 2(d) and Section 3 of the Act defines Controlling Authority as the authority appointed by the Government responsible for administering the Act. Section 2(a) of the Act provides that where an establishment has branches in multiple States, the authority to decide the disputes would be the authority appointed by the Central Government.

10. This issue was examined by a Coordinate Bench of this Court in the ***Balsara Hygiene*** case wherein it was held that where the management has branches in more than one State, the Controlling Authority would be the authority appointed by the Central Government. The judgement in the ***Balsara Hygiene*** case was the subject matter of challenge before the Supreme Court in ***Rakesh Kumar Girotra v. M/s Balsara Hygiene Products Ltd.***⁶, which was dismissed. The relevant extract of the ***Balsara Hygiene*** case is reproduced below:

“ ...

5. ...During the course of arguments of the appeal it was also submitted on behalf of the petitioner that the Controller Authority had no jurisdiction to entertain the matter in view of provisions of Section 2 of the Act. According to the petitioner, jurisdiction if any to entertain the matter was with the Central Government and that the State Government lacks inherit jurisdiction to entertain and decide the claim as the petitioner

⁶ SLP (C) No. 001904/2002; order dated 30.04.2008



company is having its branches in more than one State. The aforesaid plea with regard to want of jurisdiction was objected to by the respondent No. 2 before the Appellate Authority on the ground that the aforesaid plea could not be raised at the time of arguments particularly when the same was not raised either before the Controller Authority or in the appeal petition filed by the petitioner...

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7. Counsel appearing for the petitioner submitted that since the issue raised goes to the root of the matter and relates to inherent lack of jurisdiction of the State Government to decide the matter therefore, the said plea could be raised at any stage as it relates to inherent lack of jurisdiction. In support of the said contention counsel relied upon the decisions of the Supreme Court in *Hira Lal Patni vs. Sri Kali Nath* reported in AIR 1962 SC. 1999, *Chandrika Misir and Another vs. Bhaiyalal*, *Rattan Lal Sharma vs. Managing Committee, Dr. Hari Ram (Co-Education) Higher Secondary School And Others* reported in 1993 Lab. I.C. 1808 and in the decision of *Union Of India and Others vs. Baleshwar Singh* reported in (1924) 29 Administrative Tribunals Cases 77.

[Emphasis Supplied]

10.1 The Coordinate Bench after examining the law on this aspect held that the inherent lack of jurisdiction is a plea which goes to the root of the matter and disposes of the Petition, transferring the Claim Petition for adjudication before the controlling authority appointed by the Central Government in the following terms:

*“17. Therefore, the legal principle which is established is that if the plea raised goes to the root of the question and concerns inherent lack of jurisdiction of the court deciding the matter, such plea could be allowed to be raised even at a later stage, for it goes to very root of the matter. **Such a plea concerning inherent lack of jurisdiction of court to decide the matter could be raised before the High Court in a writ jurisdiction, for the first time, and such a plea is required to be entertained to do justice amongst the parties. On the other hand, if the plea raised concerns lack of territorial or pecuniary jurisdiction, the same could be waived by a party by submitting to its jurisdiction and by not raising at the earlier stage...***

18. In my considered opinion, the decisions rendered by the Supreme Court in the cases of *Hira Lal* and *Rattan Lal Sharma* (supra) squarely apply to the facts and circumstances of the present case and, therefore, following the



ratio of the aforesaid decisions, the writ petition is allowed and the impugned orders of the Appellate Authority as also of the Controlling Authority are set aside and quashed. The application, which was filed by the respondent No. 2 before the Controller Authority appointed by the State Government would stand transferred to the Controlling Authority appointed by the Central Government having jurisdiction in the matter namely - Controlling Authority appointed by the Central Government, Office of the Regional Labour Commissioner, Curzon Road Barracks, Kasturba Gandhi Marg, New Delhi-110001 and the same shall be proceeded with by the said authority in accordance with law allowing the petitioner management to file its written statement..”

[Emphasis Supplied]

11. Learned Counsel appearing on behalf of the Respondent No.1 has relied upon the judgment of the Bombay High Court in ***Metal Box India v. B.R. Rangari***⁷. However, the learned Counsel for the Petitioner/Management submits that this judgment is not applicable in the facts of the present case.

11.1 An examination of the judgment shows that the issue decided in the ***Metal Box India*** case was whether the Section 5 of the Limitation Act, 1963 applies to the proviso of Section 7 (7) of the Act. It was held that “factories” in other States could not be equated with “branches” and thus, the provisions of Section 2(a) of the Act are inapplicable. Given that in the present case, the Petitioner has contended that it has “branch” offices in more than one state, the issue raised in the ***Metal Box India*** case is entirely distinct from the issues involved in the present case.

12. So far as concerns the objections taken by the Respondent No.1 on the maintainability of this Petition in view of availability of alternate remedy before the Appellate authority is concerned, the same is without any merit.

⁷ 2006 SCC OnLine Bom 512



13. As stated above, it is settled law that where an order has been passed in the absence of jurisdiction, the Court under the provisions of Article 226 of the Constitution of India has ample power to set aside and to pass any order to rectify the error so caused. The Supreme Court in the **Radha Krishna** case the Court has held that the High Court has the discretion not to entertain a writ petition where an effective alternate remedy is available to the aggrieved person however, the High Court can entertain a writ petition irrespective of the fact that an effective alternate remedy is remedy is available if the order or proceedings under challenge is wholly without jurisdiction. The relevant extract of **Radha Krishna** case is reproduced below:

“27. The principles of law which emerge are that:

27.1. The power under Article 226 of the Constitution to issue writs can be exercised not only for the enforcement of fundamental rights, but for any other purpose as well.

27.2. The High Court has the discretion not to entertain a writ petition. One of the restrictions placed on the power of the High Court is where an effective alternate remedy is available to the aggrieved person.

27.3. Exceptions to the rule of alternate remedy arise where : (a) the writ petition has been filed for the enforcement of a fundamental right protected by Part III of the Constitution; (b) there has been a violation of the principles of natural justice; (c) the order or proceedings are wholly without jurisdiction; or (d) the vires of a legislation is challenged.

27.4. An alternate remedy by itself does not divest the High Court of its powers under Article 226 of the Constitution in an appropriate case though ordinarily, a writ petition should not be entertained when an efficacious alternate remedy is provided by law.

27.5. When a right is created by a statute, which itself prescribes the remedy or procedure for enforcing the right or liability, resort must be had to that particular statutory remedy before invoking the discretionary remedy under Article 226 of the Constitution. This rule of exhaustion of statutory remedies is a rule of policy, convenience and discretion.

27.6. In cases where there are disputed questions of fact, the High Court



may decide to decline jurisdiction in a writ petition. However, if the High Court is objectively of the view that the nature of the controversy requires the exercise of its writ jurisdiction, such a view would not readily be interfered with.”

[Emphasis Supplied]

14. This Court is in Agreement with the submissions of the learned *Amicus Curiae* and learned Counsel appearing for the Petitioner/Management that the provisions of Section 7(7) of the Act could only be exercised if the order was passed by the Controlling Authority within the jurisdiction of the Controlling Authority. Since the Impugned Order is passed *sans* jurisdiction, this remedy could in any event not be exercised by the Petitioner/Management.

15. On the aspect of delay and laches, this Court finds that the Petitioner/Management has clarified that the Petitioner/Management had taken steps as soon as it had received the Impugned Recovery Certificate in August/September 2020. Subsequently, Covid-19 pandemic set in. It is contended that since there was no response from the Controlling Authority, the Petition was filed in December 2022.

15.1 Given the period of Covid, and the judgment of the Supreme Court in ***In Re: Cognizance for Extension of Limitation***⁸ and the fact that the Application seeking to recall the Impugned Order was filed upon receipt of Impugned Recovery Certificate , this Court finds that the plea of delay and laches is misconceived.

16. Undisputably, the Petitioner/Management does have branch offices in cities other than Delhi. Thus, the controlling authority would be the

⁸ (2022) 3 SCC 117



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authority appointed by the Central Government and not the Controlling Authority appointed by the State Government that has passed the Impugned Order.

17. Accordingly, the Impugned Order cannot be sustained. Consequently, the Impugned Order and the Impugned Recovery Certificate are set aside. The Petition is allowed.

18. Given the fact that the matter has been pending for so long, this Court deems it apposite to direct that the Application filed by the Respondent No. 1/Workman be sent to the Labour Office at Shramev Jayate Bhawan, Ground 8 First Floor, G-4, Sector-10, Dwarka, New Delhi-110075 within two weeks from today. The Authority is requested to adjudicate the complaint in an expeditious manner. The parties shall cooperate before the office of the Authority. The parties will appear before the Authority, Central Government on 02.06.2025 at 10:30 am.

19. The Court thanks the learned Amicus Curiae for his assistance in the matter.

20. The parties shall act based on the digitally signed copy of the order.

TARA VITASTA GANJU, J

MAY 15, 2025
g.joshi/ha

Click here to check corrigendum, if any